

Defendants”) for multiple record keeping violations pursuant to the Controlled Substances Act (“CSA”), 21 U.S.C. § 801 *et seq.* On December 1, 2015, the United Pain Defendants filed a Third Party Indemnification Complaint against Third Party Defendants, Pamela Hastings West and Albert Rinchuso, who were the pharmacists-in-charge of United Pharmacy during the time the alleged record keeping violations occurred. On April 24 through April 25, 2017, a jury trial was held to determine civil monetary penalties sought by the United States against the United Pain Defendants for the alleged record keeping violations. At the conclusion of the trial, the jury found Defendant Mahmood Ahmad, M.D. not guilty of any violations of the CSA, but found that the corporation Defendant, United Pain Care, Ltd., violated the CSA with regard to 101 invoices. Thereafter, in a separate proceeding, this Court imposed civil monetary penalties in the sum of \$33,050. A jury trial on indemnification liability is presently scheduled for October 10, 2017.

(4) Prospects for Settlement: Third-Party Plaintiff has attempted settlement independently in good faith and participated in a court ordered mediation before the U.S. Magistrate in good faith without reciprocation. As a consequence, it is not expected that this case will settle prior to trial.

(5) Basis for Jurisdiction: This is a lawsuit brought by Third-Party Plaintiff against Third-Party Defendants for indemnification of CSA civil penalties.

(6) Pending Motions: Third-Party Defendants’ motions for summary judgment are currently pending. There are no other motions pending. However, Third-Party Plaintiff will file a motion in limine by the Court’s deadline of September 29, 2017.

(7) Concise Summary of the Facts: The theory of Third-Party Plaintiff’s action is indemnification liability against the pharmacists-in-charge for the CSA penalties assessed for violations while they managed the Pharmacy. The Third-Party Defendants were pharmacists

employed by United Pain Care, Ltd., to operate and manage a division of its corporation, United Pharmacy. There were no other managers employed and the owners of United Pain Care have either been absolved of any liability in the matter of record keeping violations or had nothing to do with the operation of the Pharmacy.

(8) Proposed Stipulations: It is anticipated that the parties will stipulate to the authenticity of any agreed records to be introduced at trial.

(9) Issues of Fact Expected to be Contested: The corporation's liability, through its agents, is now *res judicata*. The only fact issue that remains is whether the Third-Party Defendants were employed by the corporation during the period of time that the corporations' liability for CSA violations was established and whether it was their responsibility to maintain the records. The total amount of damages, which will include the corporation's cost of defense against the assessment of CSA penalties in the amount of \$41,192.85, will be fixed once the corporation pays all or part of the \$33,050.00 in penalties assessed.

(10) Issues of Law Expected to Be Contested: The only issue of law that is contested at this time is whether the indemnity action is "premature" as argued by the Third-Party Defendants. That legal issue is the subject of Third-Party Defendants' motions for summary judgment.

(11) List and Brief Description of Exhibits: Third-Party Plaintiff may offer the following exhibits at the trial of this matter:

- (a) Arkansas Secretary of State Incorporation Information
- (b) CSA Registration Information – Form 224
- (c) Initial Inventory (4/17/13)
- (d) Closing Inventory (4/17/13)

- (e) Receipts Total
- (f) Dispensing Total
- (g) Computation Chart (1/27/12 to 4/17/13)
- (h) Computation Chart with Purchasing Records from Distributors (1/27/12 to 4/17/13)
- (i) Computation Chart (2 pages)
- (j) Computation Chart (7/2/12 to 4/17/13)
- (k) Computation Chart (4/17/13 to 5/30/13)
- (l) DEA 222 – Cedardale Distributors LLC d/b/a GenSource Rx
- (m) Cardinal Invoice #671876
- (n) GenSource Rx documents
- (o) GenSource Rx Statement Date 12/31/12
- (p) Cedardale Detailed Sales Activity Report
- (q) Invoices (104 total)
- (r) Cardinal Invoice #6718790
- (s) East End Pharmacy Invoice (dated 3/16/12)
- (t) American Specialty Invoice #1202
- (u) Email Invoice from Shane Green
- (v) SAJ Distributors Invoice #888325
- (w) GenSource Rx Invoice PSI-312-334673
- (x) Controlled Substance Registration Certificate – Issue Date 4/4/13
- (y) US Official Order Forms Invoice Date 12/18/12
- (z) Application for Permit to Dispense Drugs Dated 5/21/09

- (aa) Letter from Peggy Cryer to Dr. Ahmad Dated 8/15/16
- (bb) Application Permit to Operate an Arkansas Pharmacy Dated 1/27/10
- (cc) Retail Pharmacy License Permit – 2011
- (dd) Retail Pharmacy License Permit – 2013
- (ee) Change of Pharmacist In-Charge from 7/2/12
- (ff) Drug Inventory Report Listing Dated 7/2/12
- (gg) Certified Copy of Judgment Dated 6/14/17
- (hh) Litigation invoices from Law Office of Timothy O. Dudley
- (ii) Litigation invoices from Samuel A. Perroni, P.A.

(12) Names of Witnesses: Third-Party Plaintiff may call the following witnesses at the trial of this matter:

- (a) Pamela Hastings West;
- (b) Albert Rinchuso;
- (c) John Conner
- (d) Kendall Shortway
- (e) John Vinson
- (f) Mahmood Ahmad, M.D.

Respectfully Submitted,

/s/ Samuel A. Perroni
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and

/s/ Timothy O. Dudley by permission

TIMOTHY O. DUDLEY

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CERTIFICATE OF SERVICE

I, Samuel A. Perroni, do hereby certify that a true and correct copy of the above and foregoing has been sent to the following via electronic mail on this 11th day of September, 2017:

Mark Hampton
1122 W. Capitol Avenue
Little Rock, AR 72201

Alex T. Gray
400 West Capitol, Suite 2910
Little Rock, AR 72201

/s/ Samuel A. Perroni

SAMUEL A. PERRONI